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IN THE
Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT, ET AL.,

Petitioners,

v.

ESSEX COUNTY WELFARE BOARD

Respondent.

**ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY**

**BRIEF FOR THE RESPONDENT,
ESSEX COUNTY WELFARE BOARD**

OPINIONS BELOW

The opinion of the Supreme Court of New Jersey is reported at 59 N.J. 75, 279 A.2d 806. The opinion of the Appellate Division is reported at 109 N.J. Super. 48, 262 A.2d 227. The opinion of the trial court is reported at 104 N.J. Super. 280, 249 A.2d 639.

JURISDICTION

The judgment of the Supreme Court of New Jersey was entered on July 12, 1971. On October 6, 1971, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to November 8, 1971. The petition was filed on November 1, 1971, and was granted on May 15, 1972. The jurisdiction of this Court rests on 28 U.S.C. 1257 (3).

QUESTION PRESENTED

Whether a state welfare agency which had advanced monthly disability assistance may recoup, out of a subsequent, retroactive, lump sum federal social security disability insurance benefits payment, an amount representing duplication of benefits received.

STATUTE INVOLVED

Section 207 of the Social Security Act, 49 Stat. 624, as amended, 42 U.S.C. 407, provides in relevant part:

*** [N] one of the moneys paid or payable or rights existing under this subchapter [relating to old-age, survivors, and disability insurance] shall be subject to execution, levy, attachment, garnishment, or other legal process

STATEMENT OF FACTS

The respondent adopts the Statement of Facts set forth in Petitioner's Brief with the following exceptions:

1. The reason that petitioner did not receive his Social Security Benefits as they became due was that the Social Security Administration had withheld benefits pending a newer address for him and the check was released when they received the new address. (A. 28).

2. The petitioner did not deposit the Social Security check in an account in his own name but in the name of Doris Philpott. (A. 15-16).

ARGUMENT

I. THE LANGUAGE OF SECTION 207 OF THE SOCIAL SECURITY ACT SHOULD NOT BE CONSTRUED TO BE AN ABSOLUTE BAR TO RECOVERY WITHOUT REGARD TO THE FACTS OF THE PARTICULAR CLAIM.

It is conceded that if the Statute in question were applied literally without consideration of the particular factual situation, the Welfare Board would be barred from recovery. However, no statute should be interpreted in a vacuum. Courts exist for the very purpose of interpreting statutes and determining applicability to particular facts. As is stated in the Brief for the United States (pp. 7-8) even such words as "none" and "no" do not always mean what they say and an absolute bar against attachment of the retroactive benefits should not be assumed if the result does not comport with the purposes and policies of the Social Security Act.

Although the letter reproduced as Appendix "A", in Petitioner's Brief sets forth the writer's opinion that the Congress intended the exemption of attachment to be unqualified and absolute, the legislative history provides no guidance in the resolution of the present issue (Brief for the United States, p. 8). In the absence of such history, the purposes and policies of the Social Security Act outline the field upon which the present issue may be determined. The purpose of the federal disability insurance program was to alleviate the financial burdens of disability. 102 Cong. Rec. 13037 (1956). There is no conflict between such purpose and the disability program administered by the Welfare Board. The Welfare Board program is, in substance, basically a federal program under the provisions of the Social Security Act operating pursuant to federal standards and requirements and with substantial (50%) federal funding for assistance grants. Any recovery enures to the

benefit of the federal government in proportion to its contribution. Federal Department of Health, Education and Welfare, Handbook of Public Administration: Part V, Fiscal Operations and Accountability, Accountability for Federal Funds Advanced, §§ 3340-3344 (1951).

The State legislation serves the same primary purpose as the federal disability assistance program — to relieve the financial burdens of disability. The distinction is that the Social Security payments are calculated without reference to the needs of the recipient so that petitioner was entitled to \$69.60, later increased to \$78.70 per month, from Social Security, and to \$108.00 per month (excluding Social Security benefits) from Welfare. If he had received his Social Security benefits on a current basis, his monthly assistance from welfare would have been reduced by that amount. In the absence of the current Social Security benefits, the Welfare Board advanced monies against petitioner's needs. If petitioner prevails, he would then, for the overlapping period, receive benefits from both sources.

Petitioners' Brief (footnote 2, page 6) refers to the statute in question as a two-fold protective shield. While it was certainly the intent of the Congress to provide such a shield in the ordinary factual situation, petitioner here is using the statute as a sword to retain duplicate benefits by his own failure or neglect to notify Social Security of his current address. What petitioner seeks is a license for any recipient of Social Security benefits to cause such benefits to be withheld for that or any similar reason, apply for Welfare assistance, and then some time later cause a retroactive Social Security award to be made for the period in question, so as to enable the recipient to receive duplicate benefits. It is respectfully submitted that such conduct does not serve the purposes of Social Security, whether under the federal disability act or the welfare program and that, if a literal reading of the statute supports such a course of action, the statute should then be construed, in such exceptional situations, to prevent duplication of benefits.

The Welfare Board by meeting petitioner's needs in the absence of his Social Security benefits fulfilled the purpose of the Social Security Act — to alleviate the financial burdens of disability. There is a well-reasoned line of cases construing a similar exemption under the Veterans' Act, 38 U.S.C. 3101,

which permits invasion of veterans' benefits by governmental agencies providing for their care and support. *In re: Lewis' Estate*, 287 Mich. 179, 186; 283 N.W. 21, 24 (1938); *Department of Public Welfare v. Sevcik*, 18 Ill. 2d. 449, 164 N.E. 2d. 10 (1960). While the Courts admittedly strained to exclude the governmental agencies from the classification of "creditors", the justification is applicable to the present case — specifically that those necessities for the recipient to subsist are subject to a different classification when provided by governmental agencies.

II. SECTION 207 OF THE SOCIAL SECURITY ACT SHOULD NOT BE EXTENDED TO COVER BENEFITS DEPOSITED IN A BANK ACCOUNT OF A THIRD PARTY AFTER PAYMENT.

There is no dispute that the immunity covering veterans' benefits continues after their deposit in the veteran's bank account. *Porter v. Aetna Casualty Co.*, 370 U.S. 159 and that such protection should be equally applicable to social security benefits. However, the instant case goes one step further. The Complaint (Pet. App. A 2) alleged:

"5. Defendant, William Wilkes, together with the defendant, Doris Philpott, entered into a plan to conceal said lump sum payment by having William Wilkes endorse said Social Security check, and depositing same in an account maintained by Doris Philpott. . . .

6. Said transfer of funds to the defendant, Doris Philpott, was purportedly made to conceal said funds and to defraud the Essex County Welfare Board of its lawful rights to same."

The Answer (A. 8) admitted that the check was deposited in an account maintained by Doris Philpott and denied the other pertinent allegations.

The Court in *Porter* (at 160-161) held that the test of the bank account being within the exemption was whether the

benefits remained subject to demand and use as the needs of the veteran for support and maintenance required. By depositing the funds in the name of a third party, the funds were no longer readily withdrawable by and subject to the demand and use of the recipient in the instant case and any exemption from legal process should not be extended to cover same.

III. THE PETITIONER, AS A MATTER OF GENERAL EQUITY, SHOULD NOT BE ENTITLED TO RETAIN DUPLICATE BENEFITS.

Not only was the petitioner directed to apply to Social Security by the Welfare Board, and would he receive duplicate benefits if he were to prevail, but he would be rewarded by virtue of his own deficiencies in not reporting his change of address to Social Security, by failing to notify the Welfare Board of his receipt of the retroactive award and attempting to conceal same. Nor would petitioner be deprived of anything to which he should be entitled if the Social Security benefits were paid as they became due.

The only injured parties are the Essex County Welfare Board which paid an obligation of the federal government and the federal government itself which ended up paying both Social Security and Welfare assistance for the same period.

Equity and good conscience have long been the test in cases for recovery of Social Security overpayments. *Green v. Secretary of Health, Education and Welfare*, 218 F. Supp. 761, (D.C.) *Gettinger v. Celebrezze*, 218 F. Supp. 161 (S.D.N.Y.), aff'd 330F.2d. 959.

In the words of the New Jersey Supreme Court, "(T)he equities are all with plaintiff." (A. 48).

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

RONALD REICHSTEIN
JOSEPH E. COHEN
Counsel for Respondent

September, 1972.